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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,199	09/17/2003	Eric Kolb	DEP-5157	3888
27777	7590	08/18/2008	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			PHILOGENE, PEDRO	
			ART UNIT	PAPER NUMBER
			3733	
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			08/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/664,199

Applicant(s)

KOLB, ERIC

Examiner

Pedro Philogene

Art Unit

3733

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-14,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al (6,454,769) in view of Pfefferle et al. (6,730,091)

With respect to the above claims, Wagner et al disclose a bone fixation system comprising a bone plate (10,110) having a plurality of plate holes (112, 14) for receiving a bone anchor (20,120) therein, and a plurality of bone anchors (20,24,121) for coupling to the bone plate to bone, at least one of the bone anchors (20,120) having a tapered proximal head (26,125) and a distal portion configured to engage bone, the proximal head (26,125) of the at least one anchor having an outer surface tapering at a taper angle toward the distal portion of the anchor; as best seen in FIGS. 9-11, at least one of the plate holes (112,14) having a bushing (118) positioned therein for receiving the proximal head of the bone anchor, the bushing having a generally stepped-shaped inner wall surface provided by a plurality of steps; as best seen in FIG.10A, formed in the inner wall of the bushing, the peaks being aligned in a generally frusto-conical shape that tapers at a peak angle distally from the proximal surface of the bushing to a distal surface of the bushing, the taper angle of the outer surface of the proximal head of the bone anchor being generally equal to the peak angle of the peaks; as best seen in FIG.9, the peaks of the bushing engaging the outer surface of the proximal of the bone

anchor to facilitate gripping engagement of the tapered proximal head of the bone anchor upon advancement of the bone anchor into the bushing, the engagement of the outer surface of the tapered proximal head of the bone anchor by the peaks being sufficient to lock the bone anchor to the bushing; as set forth in column 9, lines 9-67, column 10, lines 1-67, column 11, lines 1-67, and as best seen in FIGS.9-13. The annular peak of the bushing defines a peak plane that intersects the axis of the bushing; wherein at least one of the peak planes is oriented perpendicular to the axis of the bushing; as set forth in column 11, lines 19-28; wherein the plurality of the peaks planes are parallel to one another; as best seen in FIG.10A.

It is noted that Wagner et al did not teach that the plurality of steps having a generally annular peak; as claimed by applicant. However, in similar art, Pfefferle et al provides the evidences of the use of a plurality of steps having annular peak to provide the increased security against the screw coming loose and in the possibility of also inserting the screw in an inclination.

Therefore, given the teaching of Pfefferle et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Wagner et al; as taught by Pfefferle et al, to provide the increased security against the screw coming loose and in the possibility of also inserting the screw in an inclination.

Response to Amendment

Applicant's arguments with respect to claims 12-14, 16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
August 14, 2008